

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 JENNIFER ANNE HARPER,

12 Plaintiff,

13 v.

14 K CHRISTOPHER FARKAS, *et al.*,

15 Defendants.
16
17

NO. CV 18-10436-DDP (AGR)

ORDER TO SHOW CAUSE WHY
THE COMPLAINT SHOULD NOT
BE DISMISSED

18 On December 17, 2018, Plaintiff filed a civil rights complaint against
19 numerous defendants. For the reasons set forth below, the Court orders Plaintiff
20 to show cause in writing, on or before **February 4, 2019**, why this Court should
21 not recommend dismissal.
22
23
24
25
26
27
28

I.

FACTUAL ALLEGATIONS

A. Complaint

Plaintiff is a party to a family court proceeding in New Jersey in which she lost (1) legal and physical custody of four children; and (2) “millions of dollars” in support payments, community property interests and personal property. (Compl. ¶ 25, 30.)

According to the complaint, the family court awarded Defendant Farkas physical custody of their four children rather than place them in foster care. (*Id.* 25.) The rulings were the result of “fabricated hearsay allegations never properly entered as evidence in a hearing.” (*Id.*) Farkas used “‘Stockholm Syndrome’ tactics to induce Plaintiff’s children to fabricate evidence” and “testify falsely to governmental officials.” (*Id.* 33, 38.)

Plaintiff alleges she was destroyed emotionally and financially, and essentially “starve[d] . . . into submission” to execute a “Marital Settlement Agreement” that was “fraudulently prepared and presented” and “relegated” Plaintiff to “a monthly support check that was not consistent to what Plaintiff should have been paid if Defendant Farkas (in complicity with Defendant Curtiss/Wright Corporation) had not fabricated his finances and income to Plaintiff and to the court.” (*Id.* 28, 42.)

The complaint contains five claims for (1) conspiracy to violate constitutional rights; (2) conspiracy to interfere with civil rights; (3) conspiracy to alienate Plaintiff from her children; (4) conspiracy to compel Plaintiff to enter into the Marital Settlement Agreement; and (5) conspiracy to defraud Plaintiff by concealing and falsifying the official records of Curtiss-Wright Corporation.

The complaint seeks monetary relief and prospective injunctive relief, including injunctions preventing Defendants from enforcing the Marital Settlement Agreement, continuing to make negative and disparaging comments about

1 Plaintiff, and fabricating and falsifying evidence relating to Plaintiff's role as
2 mother.

3 **B. Judicial Notice of Family Court Proceedings in State Court in New**
4 **Jersey**

5 Pursuant to Fed. R. Evid. 201,¹ the Court takes judicial notice that Plaintiff
6 filed, in the Central District of California, a Notice of Removal of an action in the
7 Superior Court of New Jersey, Chancery Division-Family Part, Morris County.
8 *Farkas v. Harper*, CV 18-10477 DSF (JCx) ("*Harper II*"). The Notice of Removal
9 attaches a Notice of Motion in the New Jersey state court. (*Harper II*, Dkt. No. 1
10 at 7.)² A declaration from Mr. Farkas attaches a file-stamped copy of the
11 Judgment of Divorce filed on February 23, 2015 in the Superior Court of New
12 Jersey, Chancery Division-Family Part, and the Marital Settlement Agreement
13 dated February 23, 2015 incorporated in the Judgment. (*Id.* at 18, 23-38.)

14 The Judgment and Marital Settlement Agreement contain provisions that
15 Plaintiff challenges in her complaint: (1) custody of the children (§ 1); (2)
16 prohibition on the wife's contact or communication with the children in any form
17 except by further order of the court³ (§ 1); (3) support payments to the wife subject
18 to certain termination conditions (§ 2); (4) distribution of personal property (§§ 6-
19 7); (5) distribution of pensions (§ 9); and (6) jurisdiction of the state court over any
20 subsequently discovered assets (§ 12(5)(b)). The Agreement also contains a

21
22 ¹ The court may take judicial notice of court filings and matters of
23 public record. *Reyn's Pasta Bella LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6
(9th Cir. 2006).

24 ² Page citations are to the page numbers assigned by CM/ECF in the
25 header.

26 ³ The Marital Settlement Agreement describes a Final Restraining
27 Order under docket number FV-14-973-13 and further prohibitions on contact
28 between the wife and children under docket number FN-14-129-13. (*Harper II*,
Dkt. No. 1 at 23 § 1.) Plaintiff is required to make an application to the court to
modify the provisions of FV-973-13 and FN-129-13, as applicable, to contact the
children. (*Id.*)

1 release. (*Id.* ¶ 16.)

2 II.

3 **ORDER TO SHOW CAUSE WHY THIS ACTION SHOULD NOT BE DISMISSED**
4 **FOR LACK OF JURISDICTION OR FAILURE TO STATE A CLAIM**

5 The complaint does not specify which defendants are subject to each count
6 in the complaint. Nor does the complaint allege what each defendant did or did
7 not do as to each count in the complaint. The court will address several defects in
8 the complaint.

9 **A. Eleventh Amendment Immunity for New Jersey State Entities and**
10 **Their Employees in an Official Capacity**

11 Plaintiff sues two New Jersey governmental entities and their employees in
12 an official capacity: (1) New Jersey Department of Children and Families
13 (“NJDCF”); and (2) New Jersey Department of Child Protection and Permanency⁴
14 and employees Amy Sampson, Lelia Garcia, Courtney Hayes and Sabrina
15 Passucci (collectively “NJDCPP Defendants”). (Compl. ¶¶ 4-5.) NJDCPP is part
16 of NJDCF. *Craven*, 647 Fed. Appx. at 73-74.

17 A suit against a state officer in an official capacity is “another way of
18 pleading an action against [the] entity of which [the] officer is an agent.” *Hafer v.*
19 *Melo*, 502 U.S. 21, 25 (1991) (citations omitted). “Suits against state officials in
20 their official capacity therefore should be treated as suits against the State.” *Id.*

21 In *Will v. Michigan Department of State Police*, 491 U.S. 58, 64-66 (1989),
22 the Supreme Court held that states and state agencies are not “persons” subject
23 to civil rights suits under § 1983. Moreover, the Eleventh Amendment prohibits
24 federal jurisdiction over claims against a state unless the state has consented to
25 suit or Congress has abrogated its immunity. *Pennhurst State School & Hosp. v.*
26 *Halderman*, 465 U.S. 89, 99-100 (1984). New Jersey has not waived its Eleventh

27 ⁴ “Until June 29, 2012, DCPD was known as the Division of Youth and
28 Family Services.” *Craven v. Leach*, 647 Fed. Appx. 72, 74 n.2 (3d Cir. 2016).

1 Amendment immunity from suit in federal court and Congress did not abrogate
2 the state's immunity in enacting 42 U.S.C. §§ 1983 and 1985. *Kentucky v.*
3 *Graham*, 473 U.S. 159, 169 n.17 (1985); *North East Med. Servs. v. Cal. Dep't of*
4 *Health Care Servs.*, 712 F.3d 461, 466-67 & n.2 (9th Cir. 2013); see *Capogrosso*
5 *v. The Supreme Court of New Jersey*, 588 F.3d 180, 185 (3d Cir. 2009)
6 (dismissing claims against New Jersey entities and employees sued in official
7 capacity); see also *Craven*, 647 Fed. Appx. at 75 (same).

8 The Eleventh Amendment does not bar claims against state officials in an
9 official capacity for prospective injunctive relief to end a continuing violation of
10 federal law, as distinguished from state law. See *Ex parte Young*, 209 U.S. 123,
11 155-57 (1908); *Doe v. Regents of the Univ. of Cal.*, 891 F.3d 1147, 1153 (9th Cir.
12 2018) (holding Eleventh Amendment bars claim for prospective injunctive relief
13 under state law). However, the complaint does not allege (1) facts regarding any
14 specific conduct by any state official; (2) how such conduct by each state official
15 violates any federal law; and (3) any basis for prospective injunctive relief as to
16 any state official named as a defendant.

17 **B. Rooker-Feldman Doctrine Bars Claims Challenging Outcome of**
18 **Family Court Proceedings in New Jersey State Court**

19 Federal district courts are precluded from reviewing the state court orders
20 under the *Rooker-Feldman* doctrine. See *District of Columbia Court of Appeals v.*
21 *Feldman*, 460 U.S. 462, 476 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413
22 (1923); see also *Exxon Mobil Corp. v. Saudi Basic Indus., Inc.*, 544 U.S. 280, 284
23 (2005) (*Rooker-Feldman* doctrine applies to bar “cases brought by state-court
24 losers complaining of injuries caused by state-court judgments rendered before
25 the district court proceedings commenced and inviting district court review and
26 rejection of those judgments”).

27 The *Rooker-Feldman* doctrine “bars a district court from exercising
28 jurisdiction not only over an action explicitly styled as a direct appeal [from a state

1 court judgment], but also over the ‘de facto equivalent’ of such an appeal.”
2 *Cooper v. Ramos*, 704 F.3d 772, 777 (9th Cir. 2012). A federal court must
3 decline to exercise jurisdiction over any issues inextricably intertwined with the
4 state court judgment. “[W]e have found claims inextricably intertwined where “the
5 relief requested in the federal action would effectively reverse the state court
6 decision or void its ruling.”” *Id.* (citation omitted); see *Ismail v. Cnty. of Orange*,
7 693 Fed. Appx. 507, 510 (9th Cir. 2017) (affirming dismissal of fraud claims
8 against social workers under *Rooker Feldman* doctrine when state court rulings
9 relied in part on social workers’ reports and testimony, and fraud claims had
10 already been litigated in state court); *Henrichs v. Valley View Dev.*, 474 F.3d 609,
11 616 (9th Cir. 2007) (*Rooker-Feldman* doctrine bars claim when relief sought
12 “would require the district court to determine that the state court’s decision was
13 wrong and thus void”); *Safouane v. Fleck*, 226 Fed. Appx. 753, 758 (9th Cir.
14 2007) (affirming dismissal under *Rooker Feldman* doctrine because federal courts
15 lack jurisdiction to determine whether state proceedings regarding parental rights
16 were valid); *Hucul v. Mathew-Burwell*, 2017 U.S. Dist. LEXIS 16568, *11-*15 (S.D.
17 Cal. Feb. 6, 2017) (finding court lacked jurisdiction over allegations of fraud and
18 conspiracy in state family court proceedings).

19 Plaintiff seeks an injunction precluding Defendants from enforcing the terms
20 of the Judgment and Marital Settlement Agreement. Such a complaint is barred
21 by the *Rooker-Feldman* doctrine. *Mackay v. Pfeil*, 827 F.2d 540, 543-44 (9th Cir.
22 1987) (finding complaint seeking to void state court judgment and preclude its
23 enforcement was barred). There is an exception to the *Rooker-Feldman* doctrine
24 when a state court’s judgment is based on extrinsic fraud, which is defined as
25 “conduct which prevents a party from presenting his claim in court.” *Kougasian v.*
26 *TMSL, Inc.*, 359 F.3d 1136, 1140 (9th Cir. 2004). Plaintiff does not allege any
27 facts indicating she was prevented from presenting any of her allegations in state
28 court. *Hucul*, 2017 U.S. Dist. LEXIS 16568, *15-*17 (finding complaint failed to

1 state facts supporting extrinsic fraud exception to *Rooker-Feldman* doctrine in
2 family court proceedings). Moreover, *Rooker-Feldman* bars claims when the
3 allegations of extrinsic fraud were litigated in state court. *Reusser v. Wachovia*
4 *Bank, N.A.*, 525 F.3d 855, 859-60 (9th Cir. 2008); see *Ismail*, 693 Fed. Appx. at
5 510.

6 **C. Complaint Fails to State a Claim Under 42 U.S.C. § 1983**

7 “To state a section 1983 claim, a plaintiff must allege facts which show a
8 deprivation of a right, privilege or immunity secured by the Constitution or federal
9 law by a person acting under color of state law.” *Lopez v. Dep’t of Health Servs.*,
10 939 F.2d 881, 883 (9th Cir. 1991).

11 **1. Statute of Limitations**

12 Federal courts apply the forum state’s personal injury statute of limitations
13 for § 1983 claims. *Wallace v. Kato*, 549 U.S. 384, 387 (2007); *Fink v. Shedler*,
14 192 F.3d 911, 914 (9th Cir. 1999). In California, the applicable statute of
15 limitations is two years. Cal. Civ. Proc. Code § 335.1. The statute of limitations
16 starts to run when the plaintiff can file suit and obtain relief. *Wallace*, 549 U.S. at
17 388. “Under the traditional rule of accrual . . . the tort cause of action accrues,
18 and the statute of limitations commences to run, when the wrongful act or
19 omission results in damages. The cause of action accrues even though the full
20 extent of the injury is not then known or predictable.” *Id.* at 391 (citation omitted).

21
22 Plaintiff filed the complaint in this court on December 17, 2018, more than
23 two years after the Judgment and Marital Settlement Agreement were filed on
24 February 23, 2015. Plaintiff was aware of her claims no later than the entry of the
25 Judgment and Marital Settlement Agreement that contains the provisions about
26 which she now complains. Thus, Plaintiff’s claims appear to be time-barred. The
27 complaint does not allege any specific facts regarding conduct that purportedly
28 took place within two years before the complaint was filed.

1
2 **2. State Agencies and Official Capacity Claims Against State**
3 **Employees**

4 As discussed above, a state or state agency is not a “person” subject to
5 liability under § 1983. *Will*, 491 U.S. at 64-66.

6 **3. Private Actors**

7 Plaintiff names as defendants several private persons and entities: (1) K.
8 Christopher Farkas; (2) Curtiss-Wright Corporation; and (3) Center for Evaluation
9 and Counseling, Inc. and employees Margaret Pittaluga, Michael J. Flore,
10 Stephanie Kurilla, Rosa Mercado, Tamer Mossad and Melissa A. Ciottone
11 (hereinafter “CEC Defendants”).

12 “The state-action element in § 1983 ‘excludes from its reach merely private
13 conduct, no matter how discriminatory or wrongful.’” *Caviness v. Horizon Cmty.*
14 *Learning Ctr.*, 590 F.3d 806, 812 (9th Cir. 2010) (citation omitted). “[P]rivate
15 parties are not generally acting under color of state law.” *Price v. Hawaii*, 939
16 F.2d 702, 707-08 (9th Cir. 1991). “[S]tate action may be found if, though only if,
17 there is such a ‘close nexus between the State and the challenged action’ that
18 seemingly private behavior ‘may be fairly treated as that of the State itself.’”
19 *Brentwood Academy v. Tennessee Secondary Sch. Athletic Ass’n*, 531 U.S. 288,
20 295 (2001) (citation omitted); *Villegas v. Gilroy Garlic Festival Ass’n*, 541 F.3d
21 950, 956 (9th Cir. 2008).

22 In Counts IV and V, Plaintiff alleges a conspiracy between Farkas and
23 Curtiss-Wright to “conceal and hide his true income and stock bonus
24 compensation from Plaintiff.” (Compl. ¶¶ 26, 42, 44-47.) Plaintiff alleges that
25 Farkas boasted he had manipulated the books so as to deceive the auditor. (*Id.*
26 ¶¶ 26, 45.)

27 Plaintiff’s allegations that Curtiss-Wright is publicly traded and “authorized”
28 by the laws of North Carolina are insufficient to establish state action. *Jackson v.*

1 *Metro. Edison Co.*, 419 U.S. 345, 350 (1974) (“The mere fact that a business is
2 subject to state regulation does not by itself convert its action into that of the
3 State”). See *Young v. Cnty. of Haw.*, 578 Fed. Appx. 728, 730 (9th Cir. 2014)
4 (assuming two private individuals conspired to obtain fraudulent power of
5 attorney, subsequent misrepresentation to government is not sufficient to allege
6 conspiracy with government).

7 Plaintiff alleges that CEC is a “quasi-public agency.” (Compl. ¶ 6.) Plaintiff
8 alleges no facts to support this legal conclusion. The court need not accept as
9 true allegations contradicted by matters subject to judicial notice. *Sprewell v.*
10 *Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). According to the New
11 Jersey Secretary of State publicly available website, CEC is a nonprofit
12 corporation. (www.njportal.com/DOR/BusinessNameSearch for Center for
13 Evaluation and Counseling). See *King v. County of Los Angeles*, 885 F.3d 548,
14 555 (9th Cir. 2018) (taking notice of “undisputed and publicly available information
15 displayed on government websites”); *Gerritsen v. Warner Bros. Entertainment*
16 *Inc.*, 112 F. Supp. 3d 1011, 1033 (C.D. Cal. 2015) (“Under Rule 201, the court
17 can take judicial notice of public records and government documents available
18 from reliable sources on . . . websites run by governmental agencies.”).

19 The Ninth Circuit recognizes four tests to determine whether a private
20 actor was acting as a state actor for purposes of § 983: “(1) public function; (2)
21 joint action; (3) governmental compulsion or coercion; and (4) governmental
22 nexus.” *Kirtley v. Rainey*, 326 F.3d 1088, 1092 (9th Cir. 2003) (citation omitted).
23 Plaintiff does not allege any facts under any of these tests. A private nonprofit
24 entity does not become a state actor for purposes of § 1983 by receiving state
25 funds and having exemption from state taxes. See *Taylor v. St. Vincent’s Hosp.*,
26 523 F.2d 75, 77 (9th Cir. 1975).

27 The complaint does not allege facts to support an allegation of conspiracy
28 between any private actor and a state actor. To allege conspiracy in a § 1983

1 case, a plaintiff must allege “an agreement or meeting of the minds’ to violate
2 constitutional rights.” *Id.* (citation omitted). Conclusory allegations of conspiracy,
3 unsupported by facts, are insufficient to allege a conspiracy between a private
4 party and a state actor. *Simmons v. Sacramento Cnty. Superior Court*, 318 F.3d
5 1156, 1161 (9th Cir. 2003); *Price*, 939 F.2d at 708-09. A complaint must allege
6 “enough factual matter” to support a plausible inference of conspiracy. *Bell*
7 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007). The complaint contains
8 only conclusory allegations of conspiracy and fails to allege any facts in support of
9 a meeting of the minds to violate constitutional rights. *Id.* at 555 (complaint
10 “requires more than labels and conclusions, and a formulaic recitation of the
11 elements of a cause of action will not do”).

12 **4. Allegations Against Individual Defendants Other Than Farkas**

13 A complaint must give each defendant “fair notice of each claim and the
14 grounds upon which it rests.” *Erickson*, 551 U.S. at 93 (citation omitted). The
15 complaint must “clearly delineate the claims and the Defendants against whom
16 the claims are made.” *Hearns v. San Bernardino Police Dep’t*, 530 F.3d 1124,
17 1132 (9th Cir. 2008).

18 The complaint does not provide the individual defendants other than
19 Farkas with adequate notice of the claims against them because it does not allege
20 any particular unlawful conduct as to each defendant. *Harris v. Harris*, 2012 WL
21 1435680, at *9 (N.D. Cal. Apr. 25, 2012) (“plaintiff’s practice of alleging each claim
22 against ‘defendants’ results in a pleading that is prohibitively vague”) (citing
23 *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998)).

24 **D. Complaint Fails to State a Claim Under 42 U.S.C. § 1985(3)**

25 The caption of the complaint indicates that claims are brought under 42
26 U.S.C. § 1985. Of the sections under § 1985, only § 1985(3) could be applicable.
27 To state a claim for relief under § 1985(3), Plaintiff must allege facts showing a
28 conspiracy “for the purpose of depriving, either directly or indirectly, any person or

1 class of persons of the equal protection of the laws.” 42 U.S.C. § 1985(3);
2 *Holgate v. Baldwin*, 425 F.3d 671, 676 (9th Cir. 2005). Plaintiff must allege that
3 she is a member of a racial group or a non-racial group “if ‘the courts have
4 designated the class in question a suspect or quasi-suspect classification
5 requiring more exacting scrutiny or . . . Congress has indicated through legislation
6 that the class require[s] special protection.’” *Id.* (citation omitted).

7 Plaintiff does not allege that she is a member of a racial group or an
8 otherwise protected class, and does not allege any facts indicating that
9 Defendants discriminated against her on those grounds. Nor does Plaintiff allege
10 any facts in support of an allegation of conspiracy or an act taken in furtherance of
11 such a conspiracy. Accordingly, Plaintiff fails to state facts in support of a claim
12 under § 1985. *Id.* at 676-77; *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir.
13 1980) (affirming dismissal of § 1983 and § 1985(3) claim based on conspiracy to
14 keep wife in poverty and prevent her from effectively prosecuting divorce case);
15 *see also United Bhd. of Carpenters & Joiners of Am. v. Scott*, 463 U.S. 825, 839
16 (1983) (“group actions generally resting on economic motivations should be
17 deemed beyond the reach of § 1985(3)”).

18 Even assuming Plaintiff could state a claim for relief, claims brought under
19 § 1985 have the same two-year statute of limitations. *McDougal v. Cnty. of*
20 *Imperial*, 942 F.2d 668, 674 (1991). Plaintiff’s claims appear to be time-barred for
21 the same reasons explained above in connection with her claims under § 1983.

22 In addition, as discussed above, a state or state agency is not a “person”
23 subject to liability under § 1985(3).

24 **E. Absent Federal Question Jurisdiction, the Court Would Not Have**
25 **Diversity Jurisdiction Under the Domestic Relations Exception**

26 “[T]he domestic relations of husband and wife, parent and child, belongs to
27 the laws of the States and not to the laws of the United States.” *Ankenbrandt v.*
28 *Richards*, 504 U.S. 689, 703 (1992). The domestic relations exception divests

1 federal courts of jurisdiction to the extent a complaint relies on diversity
2 jurisdiction. *Atwood v. Fort Peck Tribal Ct. Assiniboine & Sioux Tribes*, 513 F.3d
3 943, 947 (9th Cir. 2008). Diversity suits for divorce, alimony or child custody
4 decrees fall outside federal jurisdiction. See *Peterson v. Babbitt*, 708 F.2d 465,
5 466 (9th Cir. 1983) (finding federal court has no subject matter jurisdiction over
6 suits to “grant a divorce or annulment, determine support payments, or award
7 custody of children”).

8 III.

9 **ORDER TO SHOW CAUSE WHY ACTION SHOULD NOT BE DISMISSED** 10 **FOR IMPROPER VENUE**

11 Federal venue law provides that a civil action may be brought in “(1) a
12 judicial district in which any defendant resides, if all defendants are residents of
13 the State in which the district is located; (2) a judicial district in which a substantial
14 part of the events or omissions giving rise to the claim occurred, or a substantial
15 part of property that is the subject of the action is situated; or (3) if there is no
16 district in which an action may otherwise be brought as provided in this section,
17 any judicial district in which any defendant is subject to the court’s personal
18 jurisdiction with respect to such action.” 28 U.S.C. § 1391(b).

19 The court has authority on its own motion to decide venue and dismiss the
20 action before a responsive pleading is filed. See *Costlow v. Weeks*, 790 F.2d
21 1486, 1488 (9th Cir. 1986). “The district court of a district in which is filed a case
22 laying venue in the wrong division or district shall dismiss, or if it be in the interest
23 of justice, transfer such case to any district or division in which it could have been
24 brought.” 28 U.S.C. § 1406(a).

25 Plaintiff alleges that Curtiss-Wright is incorporated and domiciled in North
26 Carolina. (Compl. ¶ 7.) All other defendants are domiciled in New Jersey. (*Id.* ¶¶
27 3-6, 8-18.)

28 Although Plaintiff alleges that the events, transactions and occurrences

1 that form the basis of her complaint took place in New Jersey and California, the
2 complaint fails to allege any conduct that took place in California. (*Id.* ¶ 22.) The
3 Judgment of divorce was entered by the Superior Court of New Jersey, Chancery
4 Division, Family Part, Sussex County, on February 23, 2015 in Docket Number
5 FM-14-1568-13. (*Harper II*, Dkt. No. 1 at 23.) The Marital Settlement Agreement
6 incorporated by reference in the Judgment indicates that Plaintiff was a resident
7 of Connecticut and Farkas was a resident of New Jersey as of February 23, 2015.
8 (*Id.* at 26.) The alleged fabrication of evidence submitted to the court that resulted
9 in the court orders about which Plaintiff complains took place in New Jersey.
10 (Compl. ¶¶ 36, 38, 40, 42, 43-47.) There is no indication in the complaint that any
11 allegedly unlawful conduct took place in California. Thus, venue is improper in
12 this district. See *Costlow*, 790 F.2d at 1488 (finding improper venue in
13 Washington when all defendants resided in Alaska and virtually all activity that
14 formed basis of complaint occurred in Alaska).

15 Given that venue is improper, dismissal is appropriate. Transfer is
16 available only when it is in the interest of justice. *Id.* The interests of justice do
17 not warrant transfer in this case. Plaintiff has not stated a federal claim for the
18 reasons set forth above. Based on the Judgment of divorce and the Marital
19 Settlement Agreement, there are proceedings in the New Jersey state court in
20 which Plaintiff can file appropriate applications for relief regarding the issues she
21 raises in her complaint, including custody, communication with her children,
22 support, personal property and undisclosed property.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV.
ORDER

IT IS THEREFORE ORDERED that on or before ***February 4, 2019***, Plaintiff shall show cause in writing why this court should not recommend dismissal. **If Plaintiff fails to respond to this order to show cause by February 4, 2019, then the court may recommend dismissal.**

DATED: January 3, 2019



ALICIA G. ROSENBERG
United States Magistrate Judge